

USPTO Customer No. 25280

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**REMARKS****Summary of Claim Amendments**

Claims 1 and 34 have been amended and new claims 47 and 48 have been added. Thus, Claims 22-27 and 31-48 are currently pending in the application. Claim 34 has been amended to correct a typo.

Claim 1 has been amended to call for the mat to be formed at a temperature of less than 165<sup>0</sup> C and a pressure of less than 30 psi. New claim 47 has been added to call for a psi of no more than 10 psi. New claim 48 has been added to call for a temperature of no more than 125<sup>0</sup> C. See, for example, pages 16, 18 and 19 and Figures 4, 5A and 5B of the present application.

**Summary of the Office Action**

The Office Action dated January 7, 2008, included the following rejections:

1. Claims 22-27 and 31-44 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting over claims 29-56 of co-pending Application No. 10/516,861.
2. Claims 22-27 and 31-44 were rejected under U.S.C. 103(a) as being unpatentable over US Patent 5,968,631 to KERR in view of US Patent 6,896,964 to KVESIC.
3. Claims 45-46 were rejected under U.S.C. 103(a) as being unpatentable over US Patent 5,968,631 to KERR in view of US Patent 6,896,964 to KVESIC, and in further view of PCT Application Publication No. WO96/038298 to BURKE et al.

In response to these rejections, and in view of the above Amendments, Applicants provide the following Remarks.

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Discussion of the Rejections

With respect to the nonstatutory obviousness-type double patenting rejection over co-pending Application No. 10/516,861, Applicants may be willing to submit a terminal disclaimer, once all other issues of patentability have been resolved.

The Office Action states that KERR teaches the invention, with the exception of the presence of voids in the elastomer backing. The Office Action also states that KVESIC teaches rubber mats made of ground rubber and binder having a plurality of voids, the size of which depends on factors including the size and shape of the treated rubber particles. The Office Action states that it would have been obvious to one of ordinary skill in the art to substitute the rubber material of KVESIC comprising voids for the continuous material of the elastomer backing of KERR, since KVESIC teaches the presence and size of the voids are within the level of ordinary skill in the art. Applicants respectfully traverse these statements and conclusions.

KVESIC 6,896,964 claims priority to an earlier KVESIC application 10/135,498 filed April 29, 2002 which matured into US Patent 6,821,623 to KVESIC. This earlier application had no figures, did not mention voids, and teaches that recycled rubber products are formed in a multistage process, for example, rubber is mixed with a first binder until the rubber is free of clumps, then the rubber is mixed with a second binder and molded at, for example, about 200° F to about 400° F, preferably about 300° F to about 400° F, at a pressure of about 75 psi to about 500 psi, preferably about 150 psi to about 300 psi. The KVESIC 6,896,964 reference is not entitled to the April 29, 2002 priority date for the new matter (Figures, voids, etc.) added in the February 28, 2003 CIP filing date of the application which matured into the KVESIC 6,896,964 reference.

Applicants have a first priority date of June 13, 2002, which is prior to the February 28, 2003 filing date of KVESIC 6,896,964. As such, Applicants respectfully believe that the KVESIC 6,896,964

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patent is not prior art (not prior to Applicants invention date) and should not be used to reject the claims as proposed in the Office Action.

The vulcanized thermoplastic elastomer of KERR is continuously extruded—in the form of a molten mixture of a continuous matrix of thermoplastic material with rubber particles throughout—onto a primary fabric having an adhesive layer. This thermoplastic elastomer mixture is extruded at a temperature of at least about 450°F (Col 4, lines 23-26).

KVESIC 6,821,623 does not appear to disclose Applicants claimed invention, does not provide a rationale for combination with KERR, and teaches away from the claimed invention.

MPEP 2143.02 states: "The prior art can be modified or combined to reject claims as *prima facie* obvious as long as there is a reasonable expectation of success." *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986)

Applicants respectfully submit that no such reasonable expectation on rationale exists in the combination of KERR with KVESIC 6,821,623, which would lead to the substitution of KERR's continuous elastomer backing for KVESIC's backing made from granulated rubber and two binders. Moreover, Applicants believe that materials such as the curable polyurethane taught by KVESIC are not capable of being extruded in the process described in KERR, regardless of the size of the crumb or the amount of binder.

Thus, because there is no reasonable expectation of success and no rationale for combining and then modifying the combination of references, and because KVESIC 6,821,623 does not disclose the claimed invention and teaches away therefrom, Applicants respectfully submit that no *prima facie* case of obviousness exists. Accordingly, Applicants request the withdrawal of such rejection.

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As best understood, BURKE et al. teaches the application of edging strips to a floor mat having a rubber backing. The rubber backing is in the form of a continuous sheet. BURKE et al. fails to teach the use of a crumb, or discontinuous, backing layer. There is no reasonable expectation of success in combining the BURKE et al. edging strips, which are made of carboxylated rubber, with the teachings of KERR and KVESIC 6,821,623.

Applicants respectfully submit that the addition of BURKE et al. does not cure the deficiencies of KERR and KVESIC.

For this reason, Applicants submit that no *prima facie* case of obviousness exists. Accordingly, Applicants respectfully request the withdrawal of such rejection.

Applicants respectfully believe that claim 1 defines over the prior art. Further, new claim 47 calls for no more than 10 psi. KVESIC 6,821,623 discloses preferred mold pressures of from about 75 psi, more preferably from about 150 psi.

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**CONCLUSION**

In view of the foregoing Amendments and Remarks, the Examiner is respectfully requested to withdraw the outstanding rejections and to pass the subject application to allowance. In the event that the Examiner believes that the claims would be allowable with minor changes, the Examiner is invited to telephone the undersigned to discuss an Examiner's Amendment.

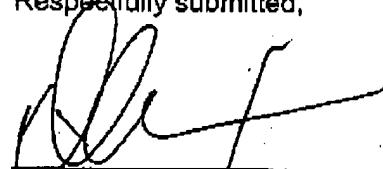
**Fee Authorization:** In the event that there are additional fees associated with the submission of these papers, Applicant hereby authorizes the Commissioner to withdraw those fees from Deposit Account No. 04-0500.

**Extension of Time:** In the event that additional time is required to have the papers submitted herewith for the above referenced application to be considered timely, Applicants hereby petition for any additional time required to make these papers timely and authorization is hereby granted to withdraw any additional fees necessary for this additional time from Deposit Account No. 04-0500.

Respectfully submitted,

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